

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

**MARIE ROBINSON**

Claimant

VS.

**STATE OF KANSAS**

Respondent

AND

**STATE SELF INSURANCE FUND**

Insurance Carrier

Docket No. 1,064,005

**ORDER**

**STATEMENT OF THE CASE**

Claimant requested review of the October 2, 2013, preliminary hearing Order entered by Administrative Law Judge Kenneth J. Hursh. Steffanie Stracke of Kansas City, Missouri, appeared for claimant. Nathan Burghart of Lawrence, Kansas, appeared for respondent and its insurance carrier.

The Administrative Law Judge (ALJ) found claimant did not prove by a preponderance of credible evidence that she injured her low back as a direct natural consequence of the injuries to the lower extremities on March 5, 2011. Further, claimant's hip symptoms appeared to be a direct natural consequence of the work injury to the knees and ankles; however, there was no evidence that symptoms involving the hips warranted additional medical treatment. Therefore, the ALJ denied claimant's request for additional medical treatment.

The record on appeal is the same as that considered by the ALJ and consists of the transcript of the October 2, 2013, Preliminary Hearing and the exhibits, together with the pleadings contained in the administrative file.

**ISSUES**

Claimant argues the overwhelming weight of the evidence supports that medical treatment should be awarded for her back due to the altered gait she developed as a natural and probable consequence of her authorized bilateral lower extremity surgeries. Further, claimant contends the Board has jurisdiction to review the ALJ's finding because

the basis of the denial of compensation is that claimant failed to prove her back injury resulted from an accident that arose out of and in the course of her employment with respondent.

Respondent maintains this is an appeal from a preliminary hearing order denying claimant's request for additional medical treatment: the matter was initiated by claimant as an application for medical treatment, and additional medical treatment was the reason for the hearing. Therefore, the Board lacks jurisdiction in this matter under K.S.A. 44-534a(a)(2), as a denial of medical care is not included in the statute. Additionally, respondent contends claimant never alleged the ALJ exceeded his jurisdiction but only claimed he made the wrong decision. Respondent argues the issue is whether claimant's request for medical treatment should have been granted or denied, an issue within the sole jurisdiction of the ALJ in the preliminary stage of proceedings.

The issues for the Board's review are:

1. Does the Board have jurisdiction to review this matter pursuant to K.S.A. 44-534a?
2. If so, is claimant's back pain and need for medical treatment the natural and probable consequence of her underlying bilateral lower extremity injuries and subsequent altered gait?

#### **FINDINGS OF FACT**

Claimant has been employed by University of Kansas Medical Center in a variety of positions for the past 25 years. On March 5, 2011, claimant was employed as a security officer. Claimant testified that on that date, she was walking down a ramp to her vehicle when she stepped on uneven pavement, her ankles "gave way," and she fell onto both knees.<sup>1</sup>

Following the incident, claimant underwent a total of five surgeries to her lower extremities: two surgeries to the right knee, one surgery to the left knee, and one surgery for each ankle. Subsequent to conservative treatment, claimant underwent her first surgery to the right knee on May 12, 2011. Claimant continued with physical therapy before undergoing her next surgery to the left ankle on February 22, 2012, followed by surgery to the right ankle on April 25, 2012.

Claimant began treatment with Dr. Jeffrey Randall on August 21, 2012. Dr. Randall performed surgery to claimant's right knee on August 28, 2012. Claimant underwent surgery to the left knee, again with Dr. Randall, on January 15, 2013. Claimant

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<sup>1</sup> P.H. Trans. at 5.

complained of intermittent pain and weakness in her knees during follow-up appointments with Dr. Randall, who prescribed a series of cortisone injections to claimant's knees. On April 29, 2013, Dr. Randall placed claimant on permanent restrictions of sedentary work and released her from his care. He noted claimant had "completed physical therapy as she has plateaued in improvement of her symptoms."<sup>2</sup>

Claimant stated she began to notice problems with her hips and her back following her left knee surgery. Claimant testified she informed Dr. Randall of her back problems, and he told her it was probably due to how she walked and that "over time it probably would improve."<sup>3</sup> Claimant agreed Dr. Randall did not prescribe or recommend any treatment regarding claimant's back. Dr. Randall's records do not mention claimant's back.

Dr. James A. Stuckmeyer, an orthopedic surgeon, performed an independent medical evaluation of claimant per her counsel's request on July 5, 2013. In his evaluation dated July 20, 2013, Dr. Stuckmeyer indicated claimant complained of ongoing symptoms of bilateral knee pain, difficulty with bilateral knee pain, and problems with activities such as prolonged standing, walking, kneeling, bending, crawling, traversing steps, and climbing ladders. Claimant also continued to have pain in her bilateral ankles and reported difficulty with prolonged standing, walking, walking on uneven surfaces, and traversing steps. Additionally, Dr. Stuckmeyer noted in his report:

[Claimant] went on to state that as a result of the significant lower extremity conditions involving the right and left knees and right and left ankles, she has now developed symptoms of pain in the lower back region, bilateral pelvic region, and absence of radicular symptoms in either lower extremity. She does relate difficulty with lifting, bending, and twisting activities.<sup>4</sup>

After reviewing claimant's medical history and performing a physical examination, Dr. Stuckmeyer opined, within a reasonable degree of medical certainty, that claimant had developed symptoms in the lower lumbar spine and pelvis as a "direct, proximate, and prevailing factor of the accident occurring on March 5, 2011, due to the abnormal gait and abnormal biomechanical stresses."<sup>5</sup> Dr. Stuckmeyer recommended claimant would benefit from x-rays of the lumbosacral spine and pelvis, pain management, and aggressive physical therapy.

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<sup>2</sup> P.H. Trans., Resp. Ex. A at 3.

<sup>3</sup> P.H. Trans. at 16.

<sup>4</sup> P.H. Trans., Cl. Ex. 1 at 8.

<sup>5</sup> *Id.* at 11.

Using the *AMA Guides*,<sup>6</sup> Dr. Stuckmeyer assessed claimant as having a DRE Category II impairment related to the diagnosis of chronic lumbosacral pain, which is a 5 percent whole person impairment. For his diagnosis of bilateral sacroiliac dysfunction not addressed by the *AMA Guides*, Dr. Stuckmeyer assessed an additional 10 percent impairment to the body as a whole. He further opined that, should additional treatment be provided, the impairment ratings for the lumbosacral spine could potentially change based on the outcome.

Dr. Stuckmeyer recommended claimant be placed on the following restrictions: no prolonged standing or walking greater than tolerated; no kneeling, squatting or crawling; no repetitive climbing of stairs greater than necessary for activities of daily living; no ladder climbing; no repetitive bending, lifting, or twisting at the waist; and no loads to exceed 15 to 20 pounds on an occasional basis below waist height.

Claimant testified she was off work from March 5, 2011, until April 8, 2013, aside from a brief time in December 2012. Claimant stated respondent was unable to accommodate her restrictions until April 2013, when it accommodated claimant by transfer to the parking facility, a sedentary position she currently holds.

#### **PRINCIPLES OF LAW**

K.S.A. 2010 Supp. 44-508(e) states:

(e) “Personal injury” and “injury” mean any lesion or change in the physical structure of the body, causing damage or harm thereto, so that it gives way under the stress of the worker’s usual labor. It is not essential that such lesion or change be of such character as to present external or visible signs of its existence. An injury shall not be deemed to have been directly caused by the employment where it is shown that the employee suffers disability as a result of the natural aging process or by the normal activities of day-to-day living.<sup>7</sup>

K.S.A. 44-534a(a)(2) (Furse 2000) states:

(2) Such preliminary hearing shall be summary in nature and shall be held by an administrative law judge in any county designated by the administrative law judge, and the administrative law judge shall exercise such powers as are provided for the conduct of full hearings on claims under the workers compensation act. Upon a preliminary finding that the injury to the employee is compensable and in accordance with the facts presented at such preliminary hearing, the administrative law judge may make a preliminary award of medical compensation and temporary

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<sup>6</sup> American Medical Association, *Guides to the Evaluation of Permanent Impairment* (4th ed.). All references are based upon the fourth edition of the *Guides* unless otherwise noted.

<sup>7</sup> See *Johnson v. State of Kansas*, No. 1,055,487, 2011 WL 4011696 (Kan. WCAB Aug. 11, 2011).

total disability compensation to be in effect pending the conclusion of a full hearing on the claim, except that if the employee's entitlement to medical compensation or temporary total disability compensation is disputed or there is a dispute as to the compensability of the claim, no preliminary award of benefits shall be entered without giving the employer the opportunity to present evidence, including testimony, on the disputed issues. **A finding with regard to a disputed issue of whether the employee suffered an accidental injury, whether the injury arose out of and in the course of the employee's employment, whether notice is given or claim timely made, or whether certain defenses apply, shall be considered jurisdictional, and subject to review by the board.** Such review by the board shall not be subject to judicial review. If an appeal from a preliminary order is perfected under this section, such appeal shall not stay the payment of medical compensation and temporary total disability compensation from the date of the preliminary award. If temporary total compensation is awarded, such compensation may be ordered paid from the date of filing the application, except that if the administrative law judge finds from the evidence presented that there were one or more periods of temporary total disability prior to such filing date, temporary total compensation may be ordered paid for all periods of temporary total disability prior to such date of filing. The decision in such preliminary hearing shall be rendered within five days of the conclusion of such hearing. Except as provided in this section, no such preliminary findings or preliminary awards shall be appealable by any party to the proceedings, and the same shall not be binding in a full hearing on the claim, but shall be subject to a full presentation of the facts. [Emphasis added.]

By statute, preliminary hearing findings and conclusions are neither final nor binding as they may be modified upon a full hearing of the claim.<sup>8</sup> Moreover, this review of a preliminary hearing order has been determined by only one Board Member, as permitted by K.S.A. 2012 Supp. 44-551(i)(2)(A), as opposed to being determined by the entire Board as it is when the appeal is from a final order.<sup>9</sup>

### ANALYSIS

It is well established under the Workers Compensation Act in Kansas that when a worker's job duties aggravate or accelerate an existing condition or disease, or intensify a preexisting condition, the aggravation becomes compensable as a work-related accident.<sup>10</sup> When a primary injury under the Workers Compensation Act arises out of and in the course of a worker's employment, every natural consequence that flows from that

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<sup>8</sup> K.S.A. 44-534a; see *Quandt v. IBP*, 38 Kan. App. 2d 874, 173 P.3d 1149, rev. denied 286 Kan. 1179 (2008); *Butera v. Fluor Daniel Constr. Corp.*, 28 Kan. App. 2d 542, 18 P.3d 278, rev. denied 271 Kan. 1035 (2001).

<sup>9</sup> K.S.A. 2012 Supp. 44-555c(k).

<sup>10</sup> *Demars v. Rickel Manufacturing Corporation*, 223 Kan. 374, 573 P.2d 1036 (1978).

injury is compensable if it is a direct and natural result of the primary injury.<sup>11</sup> In workers compensation litigation, when a primary injury under the Workers Compensation Act is shown to arise out of and in the course of employment, every natural consequence that flows from that injury, including a new and distinct injury, is compensable if it is a direct and natural result of the primary injury.<sup>12</sup>

K.S.A. 44-534a grants authority to an ALJ to decide issues concerning the furnishing of medical treatment, the payment of medical compensation and the payment of temporary disability compensation. The preliminary hearing statute found at K.S.A. 44-534a gives the ALJ authority to grant or deny the request for medical compensation pending a full hearing on the claim. In regard to the hip injury, the ALJ did not exceed his jurisdiction in denying medical treatment. The relationship of the hip complaints to the altered gait was not an issue at the preliminary hearing. The ALJ's ruling is not appealable pursuant to K.S.A. 44-534a.

Whether the need for low back treatment is related to an altered gait is a different issue. The issue was raised at the preliminary hearing of whether the low back condition was the natural and probable consequence of the original injury and an altered gait. Historically, the Board has treated this question as jurisdictional under K.S.A. 44-534a.<sup>13</sup> Dr. Stuckmeyer opined:

It would be the opinion of this examiner within a reasonable degree of medical certainty that as a direct, proximate and prevailing factor of the accident occurring on March 5, 2011, due to the abnormal gait and abnormal biomechanical stresses, [claimant] has now developed symptoms in the lower lumbar spine and pelvis. I feel the diagnosis is consistent with chronic lumbosacral pain and bilateral sacroiliac dysfunction.<sup>14</sup>

Dr. Stuckmeyer also wrote that claimant warranted a referral to pain management for her lumbosacral and pelvic complaints. Dr. Stuckmeyer's opinions regarding the relationship of the low back to the work injury and need for medical treatment are

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<sup>11</sup> *Gillig v. Cities Services Gas Company*, 222 Kan. 369, 564 P.2d 548 (1977).

<sup>12</sup> *Jackson v. Stevens Well Service*, 208 Kan. 637, 493 P.2d 264 (1972).

<sup>13</sup> See, e.g., *Kristine Davis v. USD 233*, Docket No. 1,051,464, 2012 WL 1142963 (Kan. WCAB Mar. 8, 2012); *Compton v. Burnett Automotive, Inc.*, No. 1,050,026, 2010 WL 3093232 (Kan. WCAB July 30, 2010); *Vick v. State of Kansas*, No. 1,033,888, 2010 WL 2937769 (Kan. WCAB March 2, 2010); *Reese v. Beverly Healthcare Pittsburg*, No. 1,024,449, 2007 WL 1445602 (Kan. WCAB September 18, 2007).

<sup>14</sup> P.H. Trans., Cl. Ex. 1 at 11.

uncontroverted. Uncontroverted evidence may not be disregarded and is generally regarded as conclusive absent a showing it is improbable or untrustworthy.<sup>15</sup>

### **CONCLUSION**

The Board does not have jurisdiction to review the ALJ's findings related to claimant's hip injury. The Board does have jurisdiction to review whether claimant's low back is causally related to her lower extremity injuries. The uncontroverted evidence establishes claimant's back pain and need for medical treatment is the natural and probable consequence of her underlying bilateral lower extremity injuries and subsequent altered gait.

### **ORDER**

**WHEREFORE**, it is the finding, decision and order of this Board Member that the Order of Administrative Law Judge Kenneth J. Hursh dated October 2, 2013, is reversed as to the low back injury. The Board lacks jurisdiction to review issues related to the hip injury. Medical treatment is ordered for the low back pursuant to Dr. Stuckmeyer's recommendations.

**IT IS SO ORDERED.**

Dated this \_\_\_\_\_ day of November, 2013.

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HONORABLE SETH G. VALERIUS  
BOARD MEMBER

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Kenneth J. Hursh, Administrative Law Judge

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<sup>15</sup> *Anderson v. Kinsley Sand & Gravel, Inc.*, 221 Kan. 191, 558 P.2d 146 (1976).